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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,611	09/25/2003	Timothy Siorek	02AB102 / ALBRP296US	6787
7590		07/09/2009	EXAMINER	
Susan M. Donahue Rockwell Automation 704-P, IP Department 1201 South 2nd Street Milwaukee, WI 53204			JEAN GILLES, JUDE	
			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/670,611	<b>Applicant(s)</b> SIOREK ET AL.
	<b>Examiner</b> JUDE J. JEAN GILLES	<b>Art Unit</b> 2443

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 16 March 2009.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-6, 8-21, and 24-28 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 19-21 is/are allowed.

6) Claim(s) 1-6, 8-18, and 24-28 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 25 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

This Office Action is in Reply to communication filed on 03/16/2009.

### ***Response to Arguments***

1. Applicant's arguments, see Amendment/Req. Reconsideration-After Non-Final Reject, filed on 03/16/2009, with respect to the rejections of claims 1-6, and 8-27 under Frogner have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground of rejection is made in view of Anderson et al. US 5850386 below to address claims 1-6, and 8-18 below. Claims 19-21 are allowed..

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 8-18, and 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frogner et al (hereinafter Frogner) U.S. patent No. US 6,735,553 in view of Anderson.

Regarding claim 1 Frogner teaches:

1. system that facilitates analyzing a network (fig.2), comprising:  
a network interface component that facilitates access to the network (fig. 2; see  
interface 210), the network interface component comprising:  
a network traffic analyzer (NTA) component that analyzes network data and diagnoses  
network related data problems (items 100 and 216; col. 4, lines 24-38; see the network  
performance analyzer with engine 218). However, Frogner does not appear to  
disclose a network traffic analyzer component that is embedded into the network  
interface component of a networked device. This feature is well-known in the art as  
evidenced by Anderson.

In the same field of endeavor, Anderson teaches a network/protocol performance  
analyzer that is embedded in the network interface (Anderson fig. 3) for network  
diagnoses and analysis (Anderson col. 13, lines 23-31, and col. 8, 25-49). This  
mechanism is specifically useful when monitoring, and predicting traffic in a distributed  
network environment.

Accordingly, it would have been obvious for an ordinary skill in the art, at the time the  
invention was made to have incorporated this feature of Anderson within the system of  
Frogner. One major advantage of such a combine system would be the capability of  
system to display station level statistics, displaying real time traffic analysis for instance  
to a field technician in actually analysing and solving network issues (Anderson 39-55).  
By this rationale, claim 1 is rejected.

Regarding claims 2-6, 8-18 and 22-28, the combination Frogner-Anderson teaches:

The system of claim 1, the network traffic analyzer comprising a filter component that facilitates associating subsets of network data with respective sources and/or destinations of the data (Frogner, see item 218).

3.

(Original) The system of claim 1, the NTA comprising a control component that facilitates controls of at least a subset of the network based at least in part upon an analysis of network data by the NTA (Frogner, see item 220).

4.

(Original) The system of claim 1, the NTA further comprising an artificial intelligence component that performs a probabilistic analysis on the network data to facilitate determining a state of the network (Frogner, col. 6, lines 54-67 continue in lines 1-10 of col. 7).

5.

(Original) The system of claim 1, the NTA further comprising an artificial intelligence (AI) component that performs a probabilistic analysis on the network data to facilitate inferring a state of the network (Frogner, see statistical analysis engine 318).

6.

(Currently Amended) The system of claim 5, the inference relates to a predicted future state of the network and/or a predicted future state of a device that is part of the network (Frogner, see prediction engine 318; col. 6, lines 54-67 continue in lines 1-10 of col. 7).

7.

(Cancelled)

8.

(Original) The system of claim 1, the NTA is an asynchronous integrated circuit (ASIC) (Frogner, see figs. 2 and 3).

9.

(Original) The system of claim 1, the NTA is software that makes up part of the network interface (Frogner, see item 214).

10. (Original) The system of claim 1, the NTA is a combination of software and hardware that makes up part of the network interface (Frogner, fig. 2; col. 4, lines 39-67).

11. (Original) The system of claim 1, further comprising a data store that has stored thereon historical data relating to state(s) of the network (Frogner, database 320; col. 6, lines 39-67).

12. (Original) The system of claim 5, the AI component comprises at least one of: a trained classifier, a neural network, a data fusion engine, a Bayesian belief network, a Hidden Markov Model (Frogner, see data capture engine 312).

13. (Original) The system of claim 1, the network traffic analyzer filter component

comprising a data acquisition component that facilitates a filter and analysis of network related data problems (Frogner, see item 218).

14.

(Original) The system of claim 2, the filter component further comprising:  
a source MAC ID filter component; a destination MAC ID filter component; and  
a packet type filter component (using a filter component with a NTA with AMC ID and  
packet type description is inherently part of the NTS presented in figs 2 and 3)

15.

(Original) The system of claim 14, the filter component further comprising:  
a sequence number filter component;  
a packet length filter component; and  
a checksum component (Frogner, using a filter component with a NTA with sequence  
number filter, with packet length description is inherently part of the NTS presented in  
figs 2 and 3).

16. (Original) The system of claim 3, the control component further comprising a data  
collection start/stop component (Frogner, using a filter component with a NTA with data  
collection start/stop is inherently part of the NTS presented in figs 2 and 3)

17.

(Original) The system of claim 16, the control component further comprising:

a memory status and control component; and  
a memory upload and download component (Frogner, figs 2 and 3).

18.

(Currently amended) A network analysis system (figs. 2 and 3) comprising;  
means for accessing and interfacing with a network; and  
means for analyzing and diagnosing the network related data problems, the means for  
analyzing and diagnosing is integrated with the means for accessing and interfacing  
with the network (Frogner, figs. 2-3; col. 4, 39-60; col. 5, 36-64) of a network device  
(Anderson col. 13, lines 23-31, and col. 8, 25-49).

22. (Previously Presented) The system of claim 1, wherein the network traffic analyzer  
is embedded into the network interface component (figs 2 and 3).

23. (Previously Presented) The system of claim 22, wherein the network interface  
component is a network interface of a networked device (Frogner, figs 2 and 3).

24. The system of claim 1, wherein each of networked devices with a network  
interface comprises an embedded network traffic analyzer component (Frogner, figs 2  
and 3).

25. (The system of claim 25, wherein a plurality of the networked devices function as a  
network traffic analyzer component (Frogner, figs 2 and 3).

26. The system of claim 1, wherein the network traffic analyzer component comprises a data acquisition component and a post analysis and display component (Frogner, figs 2 and 3).
27. The system of claim 27, one networked device comprising a network interface includes the data acquisition component and an another networked device comprising a network interface includes the post analysis and display component for the network traffic analyzer component (Frogner, figs. 2 and 3).
28. (New) The system of claim 1, wherein the network traffic analyzer component is embedded into the network interface of a networked device that is routinely connected to the network (Anderson, fig. 3).

***Allowed claims***

4. Claims 19-21 are allowed.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914.

The examiner can normally be reached on Monday- Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia Dollinger on (571) 272-4170. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-3301.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0800.

/Jude J Jean-Gilles/

Primary Examiner, Art Unit 2443

July 06, 2009

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